

Assembly Bill No. 1512

Passed the Assembly September 10, 2009

Chief Clerk of the Assembly

Passed the Senate September 9, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 3.5 (commencing with Section 110286) to Part 5 of Division 104 of the Health and Safety Code, relating to food and drug safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1512, Lieu. Food and drugs: sale.

Existing law, the Sherman Food, Drug, and Cosmetic Law, contains various provisions regarding the contents, packaging, labeling, and advertising of food, drugs, and cosmetics. A violation of any of these provisions is punishable as a misdemeanor.

This bill would prohibit a retailer from selling or permitting to be sold after the “use by” date infant formula, as defined, or baby food, as defined, that is required to have this date on its packaging pursuant to federal law. It would also prohibit a retailer from selling or permitting to be sold after the expiration date an over the counter drug, as defined, that is required to have this expiration date on its packaging pursuant to that federal law. A violation of these provisions would, notwithstanding the above-described penalty, be punishable as an infraction with a specified fine. By creating a new crime, this bill would create a state-mandated local program.

This bill would state the intent of the Legislature that local and state authorities should make reasonable efforts to notify the public about potential threats to public safety resulting from the sale of expired products and, for public purchasers of expired products, to contact their respective state or local authorities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.5 (commencing with Section 110286) is added to Part 5 of Division 104 of the Health and Safety Code, to read:

CHAPTER 3.5. EXPIRATION AND USE BY DATES

110286. (a) A retailer shall not sell or permit to be sold after the “use by” date infant formula or baby food that is required to have this date on its packaging pursuant to the federal act and federal regulations adopted pursuant to the federal act, including, but not limited to, Section 107.20 of Title 21 of the Code of Federal Regulations.

(b) A retailer shall not sell or permit to be sold after the expiration date an over the counter drug.

(c) Notwithstanding Section 111825, any retailer who violates this section is guilty of an infraction, punishable by a fine of not more than ten dollars (\$10) per day for each item sold or permitted to be sold after the expiration or “use by” date. The fine shall be calculated based upon the number of days between the expiration or “use by” date and the date of sale. The date of sale shall be established by evidence of the proof of purchase, including, but not limited to, a sales receipt. Notwithstanding Section 111835, the moneys from fines collected pursuant to this section shall be deposited in the General Fund, except that when fines are collected under this part by the local jurisdiction, the moneys collected shall be deposited into the general fund of the local jurisdiction.

(d) Nothing in this section shall be construed to preclude any other action authorized by law.

(e) For purposes of this section, “infant formula” shall have the meaning given in subdivision (z) of Section 321 of Title 21 of the United States Code.

(f) For purposes of this section, “baby food” shall mean the processing of canned fresh fruits and vegetables, meats, eggs, fruit juices, cereal, formulated entrees, and desserts and snacks using fresh, preprocessed, or any combination of these and other food ingredients necessary for the production of infant foods.

(g) For purposes of this section, an “over the counter drug” means a nonprescription drug regulated by the federal Food and

Drug Administration that is required to have an expiration date on its packaging pursuant to the federal act and federal regulations adopted pursuant to the federal act, including, but not limited to, Section 211.137 of Title 21 of the Code of Federal Regulations.

SEC. 2. It is the intent of the Legislature in adding Chapter 3.5 (commencing with Section 110286) to Part 5 of Division 104 of the Health and Safety Code that local and state authorities make reasonable efforts to notify the public about potential threats to public safety resulting from the sale of expired products and, for public purchasers of expired products to contact their respective state or local authorities.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2009

Governor